

REMARKS

The Office Action mailed June 22, 2009, and the prior art applied therein have been carefully studied. The claims in the application remain as claims 2-10, 12-14, 16-18, 20, 21, 23-26, 28, 29, 31-33 and 36-40. These claims define patentable subject matter and should be allowed. Favorable reconsideration and allowance are earnestly solicited.

Claims 3, 8, 21 and 23 have been rejected under the second paragraph of §112 on the basis that the recitation "the body condition score" in line 2 of claim 3, and the recitation of "the rear part" of the cow both lack antecedent basis. The rejection is respectfully traversed.

In deference to the Examiner's views, claim 3 has been appropriately amended. Such amendments are clearly cosmetic and add no limitations to the claims, with no such limitations being intended or presented.

For the record, every dairy cow has a BCS which can be determined, i.e. it is an inherent characteristic, whereby antecedent basis is unnecessary. Similarly, all cows have a rear part. Again, no antecedent basis is unnecessary.

Withdrawal of the rejection is in order and is respectfully requested.

All of Applicants' claims, namely claims 2-10, 12-14, 16-18, 20, 21, 23-26, 28, 29, 31-33 and 36-40 have been rejected as obvious under §103 from the Coffey et al publication (Reference U), hereinafter "Coffey", in view of Ellis USP 5,412,420 (Ellis). This rejection is respectfully traversed.

Coffey is not "prior art" to the present application, as it appears to have been published in March 2003. The present application, which was filed on July 27, 2003, is entitled to its priority date of July 25, 2002.¹ The priority application is in English and a copy is of record in the PTO. Nevertheless, attached hereto is a duplicate copy. As Coffey is not "prior art," the rejection does not apply.

Withdrawal of the rejection is in order and is respectfully requested.

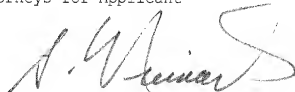
All issues raised in the Office Action are addressed above. As previously indicated, Applicant believes and respectfully submits that the present application is ready for allowance. Favorable consideration and early formal allowance are again respectfully requested.

If the Examiner has any questions or suggestions, the Examiner is respectfully requested to contact the undersigned at (202) 628-5197.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By



Sheridan Neimark
Registration No. 20,520

SN:ltm
Telephone No.: (202) 628-5197
Facsimile No.: (202) 737-3528
G:\BN\C\cohn\sharony1\pto\2009-12-22AMD.doc

¹ Even without a priority claim, Coffey would not qualify as §102(b) prior art.